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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
LANIER, BENJAMIN E	
ART UNIT	**PAPER NUMBER**
2132	

MAIL DATE	DELIVERY MODE
11/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/735,586	PEPPEL, TYLER	
	Examiner	Art Unit	
	Benjamin E. Lanier	2132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 November 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-8,11,12,27-32 and 38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-8,11,12 and 27-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☒ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed 09 November 2007 amends claims 2-8, 11, 12, and 27-32. Claims 9, 25, and 26 have been cancelled. Claim 38 has been added. Applicant's amendment has been fully considered and entered.

Response to Arguments

2. Applicant argues, "As discussed during the interview abovementioned, a key distinction between the claimed invention and that of Smith is that the claimed invention is used in connection with a game play segment of the computer game program. During the interview, the Examiner indicated that this limitation would be sufficient to avoid the Smith reference." As an initial note, the Examiner made no such indication in the interview that the discussed amendments would "avoid" the Smith reference. To the contrary, Examiner merely stated that the discussed claim amendments would overcome the current claim rejections in view of Smith (i.e. Smith would not anticipate the discussed claim, now added claim 38). However, upon further consideration, a new ground(s) of rejection is made in view of Smith, U.S. Patent No. 5,533,124, in view of Pearson, U.S. Patent No. 5,411,259.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 2-7, 27-32, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, U.S. Patent No. 5,533,124, in view of Pearson, U.S. Patent No. 5,411,259. Referring to claim 38, Smith discloses executable program code under the control of a processor/controller (Col. 5, lines 31-33), digital data (Col. 5, line 51), software that causes trading card data that has been stored to be cleared or deleted (Col. 3, lines 24-34), a copy protection scheme using encryption (Col. 2, lines 31-44), data for producing graphics, written text, sound, and video (Col. 2, lines 13-17), interactive areas used to provide different graphics and multimedia (Col. 3, lines 13-15), and a PC (Col. 5, line12), trading card software (Col. 5, line 27), input devices (Col. 5, line 27), and a display (Col. 5, line 30), which meets the limitations of a plurality of electronic trading cards embodied in an electronic format that expresses a trading card metaphor that supports content scarcity and content authenticity, at least one of said electronic trading cards stored in a computer readable medium, at least one of said electronic trading cards comprises data that is used in connection with the generation or display of multimedia content. Smith discloses that the trading card content can represent a sports figure such as a baseball player and includes relevant information for that player, which includes statistics (Col. 7, line 44 – Col. 8, line 45). Smith does not disclose that this trading card content is utilized in or uniquely

identifiable with a computer game program. Pearson discloses a computer gaming system that utilizes trading cards to gather information about the players represented by those cards for use within the actual computer game operating in the gaming system (Col. 2, lines 12-54), which meets the limitation of at least one corresponding computer game program in connection with a game play segment. The trading card information could be stored in the memory of the computer gaming system using an identifier, for use with the computer game (Col. 2, lines 51-54), which meets the limitation of at least one of electronic trading cards is uniquely identified with information that is used in connection with the computer game program, at least one of said electronic trading cards comprise data that is used in connection with a game play segment of said computer game program. It would have been obvious to one of ordinary skill in the art at the time the invention was made for the trading cards of Smith to be used utilized in a computer game as suggested by Pearson in order to provide a computer game user with the flexibility of using a large number of accumulated players, and other game aspect cards, in a computer game, which would provide the user with fresh computer game experience by allowing the user the implement different cards within the computer game as taught by Pearson (Col. 3, lines 6-63).

Referring to claims 2, 5, 6, 27-32, Smith discloses executable program code under the control of a processor/controller (computer code segment embodied in tangible medium) (Col. 5, lines 31-33), digital data (digital content) (Col. 5, line 51), software that causes trading card data that has been stored to be cleared or deleted (supports content scarcity and content authenticity) (Col. 3, lines 24-34), a copy protection scheme using encryption (lock and key mechanism) (Col. 2, lines 31-44), data for producing graphics, written text, sound, and video (graphic identification code and multimedia) (Col. 2, lines 13-17), interactive areas used to provide different graphics

and multimedia (Col. 3, lines 13-15), and a PC (Col. 5, line12), trading card software (Col. 5, line 27), input devices (Col. 5, line 27), and a display (Col. 5, line 30).

Referring to claim 3, Smith discloses a system comprising RAM (Col. 2, line 52), hard disk (Col. 9, line 5), or other disk drive (Col. 8, line 64), which meets the limitation of at least one of said electronic trading cards is transportable across a wide range of digital media, including CD-ROM, networked servers, fixed discs, floppy discs, data cards, writable optical storage and RAM.

Referring to claim 4, Smith discloses a copy protection scheme where the trading card data will be deleted after quitting the program (Col. 9, lines 19-22), which meets the limitation of at least a portion of electronic trading card self-destructs and/or self erases after a given time has elapsed, said electronic trading card is made available for limited time on on-line systems, and said electronic trading card is time stamped.

Referring to claim 7, Smith discloses individual data that is associated with a certain player or character that can be packaged together (Col. 2, lines 10-13), which meets the limitation of at least one of said electronic trading cards is randomly distributed in partial sets.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, U.S. Patent No. 5,533,124, in view of Pearson, U.S. Patent No. 5,411,259 as applied to claim 38 above, and further in view of Cooper, U.S. Patent No. 5,757,907. Referring to claim 8, Smith discloses executable program code under the control of a processor/controller (computer code segment embodied in tangible medium) (Col. 5, lines 31-33), digital data (digital content) (Col. 5, line 51), software that causes trading card data that has been stored to be cleared or deleted (supports content scarcity and content authenticity) (Col. 3, lines 24-34), a copy protection scheme using

encryption (lock and key mechanism) (Col. 2, lines 31-44), data for producing graphics, written text, sound, and video (graphic identification code and multimedia) (Col. 2, lines 13-17), interactive areas used to provide different graphics and multimedia (Col. 3, lines 13-15), and a PC (Col. 5, line12), trading card software (Col. 5, line 27), input devices (Col. 5, line 27), and a display (Col. 5, line 30). Smith does not disclose executable program code that has a trial mode or trial number of sessions. Cooper discloses program code that has a trial mode defined by either a timer, or a counter (Col. 8, lines 38-45), which meets the limitation of a runtime engine that must be present in a local computing device, said runtime engine including media handler and display routines, a timing mechanism, display management, and input handlers. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a time trial on the executable program code of Smith in order to reduce unnecessary risks of piracy or unauthorized utilization beyond the trial interval as taught in Cooper (Col. 2, lines 26-31).

7. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, U.S. Patent No. 5,533,124, in view of Pearson, U.S. Patent No. 5,411,259 as applied to claim 38 above, and further in view of Welsh, U.S. Patent No. 4,970,666. Referring to claims 11 and 12, Smith discloses executable program code under the control of a processor/controller (computer code segment embodied in tangible medium) (Col. 5, lines 31-33), digital data (digital content) (Col. 5, line 51), software that causes trading card data that has been stored to be cleared or deleted (supports content scarcity and content authenticity) (Col. 3, lines 24-34), a copy protection scheme using encryption (lock and key mechanism) (Col. 2, lines 31-44), data for producing graphics, written text, sound, and video (graphic identification code and multimedia)

(Col. 2, lines 13-17), interactive areas used to provide different graphics and multimedia (Col. 3, lines 13-15), and a PC (Col. 5, line12), trading card software (Col. 5, line 27), input devices (Col. 5, line 27), and a display (Col. 5, line 30). Smith does not disclose a digital content library or album of computer code. Welsh discloses an image library containing a collection of images (Col. 3, lines 6-8), which meets the limitation of at least one digital content library, and means for organizing, sequencing, and customizing said digital content from said at least one digital content library, at least one album of electronic trading cards wherein said at least one album is used for management and collection of any number from a few up to thousands that an end user has collected. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the image library in the executable code system of Smith because the library would enable the user to select additional image elements from the image library as taught in Welsh (Col. 3, lines 6-19).

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin E. Lanier whose telephone number is 571-272-3805. The examiner can normally be reached on M-Th 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin E. Lanier
Primary Examiner